

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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| In the Matter of |) | |
| |) | |
| Deployment of Wireline Services Offering |) | CC Docket No. 98-147 |
| Advanced Telecommunications Capability |) | |
| |) | |
| Implementation of the Local Competition |) | CC Docket No. 96-98 |
| Provisions of the Telecommunications |) | |
| Act of 1996 |) | |
| |) | |
| Applications for Consent to the Transfer |) | CC Docket No. 98-141 |
| of Control of Licenses and Section 214 |) | |
| Authorizations from Ameritech Corporation, |) | |
| Transferor to SBC Communications Inc., |) | |
| Transferee |) | |
| |) | |
| Common Carrier Bureau and Office of Engineering |) | NSD-L-00-48 |
| and Technology Announce Public Forum on |) | DA 00-891 |
| Competitive Access to Next-Generation |) | |
| Remote Terminals |) | |

**REPLY COMMENTS OF
FOCAL COMMUNICATIONS CORPORATION**

Focal Communications Corporation ("Focal") submits these reply comments in the above captioned proceeding pursuant to the Public Notice released by the Federal Communications Commission ("Commission") on May 24, 2000.¹ Focal continues its support for ALTS' request and urges the Commission to address the issues raised in its Petition. As in its Comments, Focal's Reply Comments will concentrate on the issues relating to the provisioning of special access services. Several ILECs deny the general premise that there is a problem with the provisioning of special access services and oppose any Commission action to promote better

¹ *Pleading Cycle Established for Comments on ALTS Petition for Declaratory Ruling: Loop Provisioning*, Docket Nos. 98-147, 96-98, 98-141, NSD-L-00-48, Public Notice, DA 00-1141 (rel. May 24, 2000).

provisioning for special access services.² Focal submits that there is abundant data illustrating that the provisioning of special access services is poor and getting worse and attaches relevant data from the Commission's ARMIS web site.³ Accordingly, Focal urges the Commission to take action to improve the provisioning of special access services by adopting more detailed reporting requirements, creating explicit provisioning metrics, and imposing self-executing penalties.⁴

I. The Commission Has Authority to Act

Despite assertions to the contrary, the Commission clearly has the authority to act to improve the provisioning of special access services.⁵ As Focal noted in its initial Comments, the Commission regulates interstate special access service pursuant to its authority under Sections 201-205 of the Act.⁶ The Commission retains this authority and may certainly use it to address the special access provisioning issues. Thus, the proper question is not whether the Commission may act on this issue, but whether it should. As Focal has demonstrated in its Comments and below in these Reply Comments, the difficulties experienced in obtaining special access services are substantial, systemic, and well documented.⁷ Accordingly, these problems warrant immediate action by the Commission.

² Comments of Bell Atlantic at 17; Comments of BellSouth at 4; Comments of GTE at 6, 12; Comments of SBC at 15.

³ See, e.g., *Retrieved Data from ARMIS Report 45-05: Table Ia. Installation and Repair Intervals (Interexchange Acc.) - Annual*, attached as Exhibit I (data available at: <http://gullfoss.fcc.gov:8080/cgi-bin/websql/prod/ccb/armis1/forms/armis.hts>); see also *Installation Intervals for Service to IXC's*, attached as Exhibit II (available at: <http://www.fcc.gov/ccb/armis/sq/documents/10.pdf>); see also *Installation Commitments for Service to IXC's*, attached as Exhibit III (available at: <http://www.fcc.gov/ccb/armis/sq/documents/8.pdf>).

⁴ Focal would support the Commission addressing these issue in a rulemaking proceeding, if it deems this to be more appropriate.

⁵ Comments of BellSouth at 4.

⁶ Comments of Focal at 6, 8; 47 U.S.C. §§ 201-205.

⁷ See Exhibits, *Supra* n. 3.

II. The Current Reporting Requirements Are Insufficient

Focal agrees with Bell Atlantic that the data available through the current reporting mechanisms is not useful in documenting whether special access is being provisioned by ILECs in a discriminatory manner.⁸ This lack of data is a significant problem that Focal urges the Commission to address. While the ARMIS system discussed by SBC contains sufficient information to provide a picture of a troubling five year trend of increasingly poor provisioning for special access services,⁹ it does not provide a breakdown of data by customer so that comparisons can be made to determine whether discrimination is occurring.

In addition, there is ample opportunity for the ILECs to game this system so as to manipulate the numbers provided in the ARMIS reports and little opportunity for the customers that experience problems to determine whether their troubles have been correctly categorized. For example, if an ILEC unilaterally moves a FOC date for a large order, that data may be counted in the "% Commitments Met," even though the initial date was missed. Also, in many instances ILEC technicians do not have a system in place for alerting CLECs and their customers that they are having difficulty accessing a customer's premises even though the customer is available to provide access. In such cases, the number reported as "Missed for Customer Reasons" may be significantly inflated.

Thus, the fact that there is so little useful data available on the quality and parity of special access provisioning is not an indication that there is no problem, rather it indicates that there is not an adequate mechanism in place to measure, let alone *correct* the difficulties faced by those ordering special access services.

⁸ Comments of Bell Atlantic at 15-17.

⁹ Comments of SBC at 16. *See, e.g., Installation Intervals for Service to IXC's*, attached as Exhibit II (illustrating a five year trend of increasing installation intervals for special access services); *see also Installation Commitments for Service to IXC's*, attached as Exhibit III (illustrating a five year trend of decreasing % commitments met).

III. The Market for High Capacity Loops Are Not Competitive

Several ILECs contend that there is sufficient competition in the market for special access services to counter any need for remedying any existing provisioning problems.¹⁰ These assertions, however, are contrary to the Commission's findings. The Commission has recently ruled that the lack of access to the ILEC's ubiquitous loop plant, including high capacity loop facilities, impair competitors' ability to provide services to end users.¹¹ The Commission also has recognized self provisioning and obtaining high capacity loops from third parties are not adequate replacements for obtaining these loops from ILECs due to associated cost and delay of these alternatives.¹² Many of the facilities used for special access services are the very same facilities that are required to be made available as UNEs. However, many CLECs, including Focal, do not have access to these facilities as UNEs due to restrictions on the conversion of special access circuits to enhanced extended loops that are wholly unrelated to the competitive nature of the facilities.¹³ As a result, these CLECs are reliant upon special access services to meet their high capacity loop requirements.

SBC also argues that the FCC granted pricing flexibility for special access because the service is becoming increasingly competitive.¹⁴ A complete reading of the *Special Access Order* indicates that the Commission was acting to create a mechanism granting ILECs increasing pricing flexibility as competition develops, without permitting ILECs to use their control of the

¹⁰ Comments of BellSouth at 4; Comments of SBC at 15.

¹¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Doc. No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 at ¶¶ 181, 184 (1999).

¹² *Id.* at ¶ 184.

¹³ *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Doc. No. 96-98, Supplemental Order Clarification, FCC 99-370 at ¶ 21 (rel. June 2, 2000). In fact, these facilities can be converted to UNEs in some circumstances. *Id.*

¹⁴ Comments of SBC at 15.

bottleneck facilities to abuse their competitive advantage.¹⁵ This was also the aim in the *Access Charge Reform Order* cited by SBC.¹⁶ However, the ILECs have not been granted price cap flexibility on a universal basis because not all markets for special access services are even minimally competitive. The Commission has recognized that there are markets that are subject to greater competition than others.¹⁷ Indeed, the experience of Focal and other CLECs in obtaining special access indicates that competition is not yet robust enough to ensure that ILECs will provide quality services without Commission action.

Furthermore, in the prior proceedings relating to special access services the Commission has focused almost exclusively on the potential anticompetitive uses of pricing by ILECs and has not addressed provisioning and service quality as a means of competitive abuse by ILECs. However, Focal submits that new standards and an enforcement mechanism governing service quality and timely provisioning are as necessary for the success of special access services as are the rules governing pricing previously created by the Commission. The ILECs are equally able to engage in competitive abuses through the provisioning process as they are through pricing. In fact, such provisioning abuses are easier to commit and more difficult to detect. Focal believes that its experience and the available data make clear that such abuse is now occurring.¹⁸ Moreover, competition in special access markets does not give ILECs a license to discriminate in the provisioning of special access when purchased by CLECs. Accordingly, Focal urges the Commission to address the special access provisioning issues raised in this proceeding.

¹⁵ *Expanded Interconnection with Local Telephone Company Facilities*, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd. 7369, ¶¶ 172, 177 (1992) ("*Special Access Order*").

¹⁶ Comments of SBC at 15 (citing *Access Charge Reform*, CC Docket 96-262, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd. 14221, ¶¶ 187-88 (1999) ("*Access Charge Reform Order*").

¹⁷ See *Special Access Order* at ¶ 172; see also *Access Charge Reform Order* at 3.

¹⁸ See Exhibits I, II & III.

IV. The Need For Loop Make-Up Information

Several ILECs argue that because CLECs do not design, build or control special access circuits there is no need for them to have access to loop make-up information similar to that made available for UNEs.¹⁹ Focal submits that access to loop make-up information is as important to CLECs that order special access as it is for those that order UNEs. While it is true that CLECs do not design, own or control special access circuits, this fact is largely irrelevant to the issue at hand. SBC claims that CLECs do not "bear any kind of risk in terms of whether or how [a special access circuit] is used."²⁰ In fact, the exact opposite is true. The CLECs are the ones that are contracting with the end customers for the provision of services over special access circuits. As such, the CLECs bear all of the competitive risks associated with their use, such as high customer dissatisfaction, loss of customers, lost revenues, and damage to corporate goodwill. The ILECs do not face these competitive repercussions if the provisioning and quality of these services are poor because they control the bottleneck facilities and do not have to answer to end users. In fact, they have an incentive to see their potential competitors fair poorly in the eyes of their customers.

Furthermore, the reason CLECs such as Focal need access to loop make-up information is because they need to know the capacity, quality and availability for a particular purpose of special access lines *prior* to ordering these circuits. In many instances the data that the ILECs provide regarding the availability of special access lines is unreliable because even though the ILECs report that the circuits are available, the circuits often prove to be unsuitable for high capacity transmissions because certain components of the circuits either do not have the capacity, or are in need of extensive maintenance or rebuilding. In these situations the special access lines

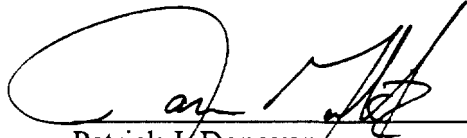
¹⁹ Comments of GTE at 12 - 13; Comments of SBC at 17.
²⁰ Comments of SBC at 17.

are functionally unavailable, even though the ILEC lists them as available. Providing CLECs with loop make-up information will permit CLECs to determine whether a given special access circuit is available as a practical matter, without having to waste substantial amounts of time in the ordering process only to find the circuit is unsuitable for its intended use.

V. Conclusion

For the foregoing reasons, Focal urges the Commission to adopt federal provisioning standards and penalties for application to special access services as described herein.

Respectfully submitted,



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Dated: July 10, 2000

EXHIBIT I

Retrieved Data from ARMIS Report 45-05: Table Ia. Installation and
Repair Intervals (Interexchange Acc.) – Annual

43-05: Table Ia. Installation and Repair Intervals (Interexchange Acc.) - Annual

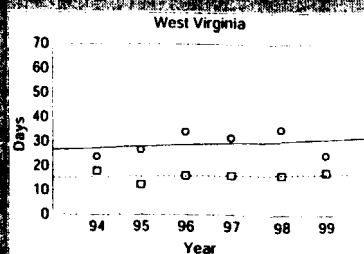
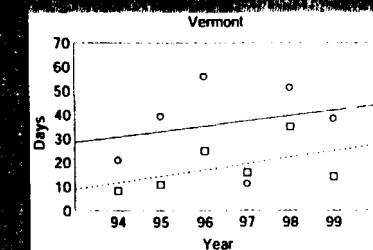
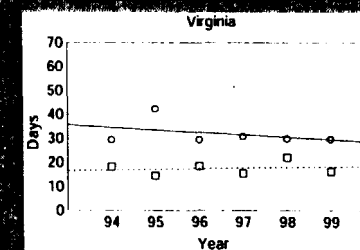
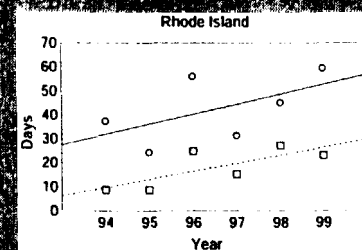
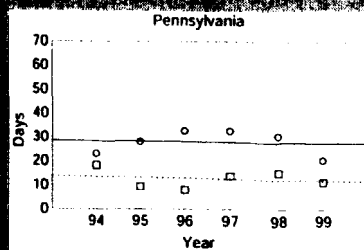
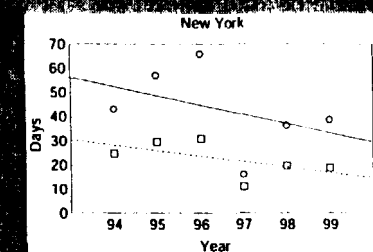
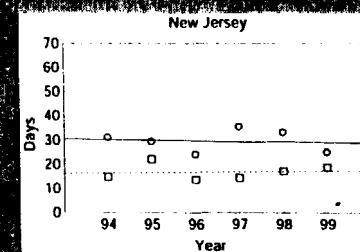
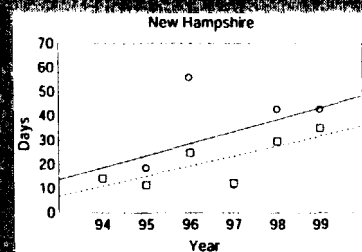
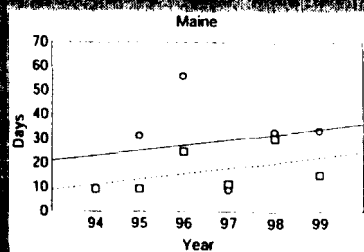
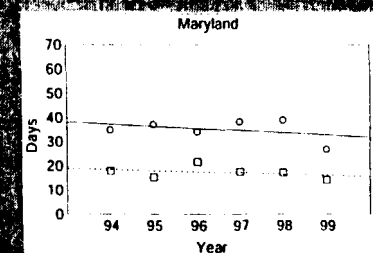
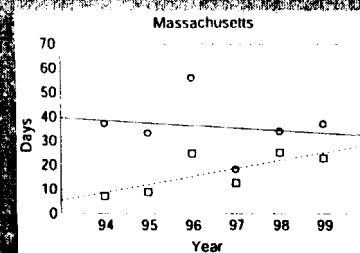
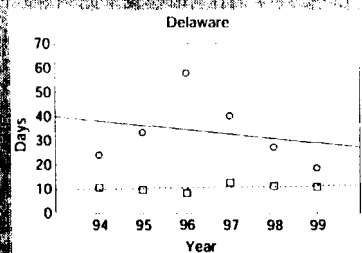
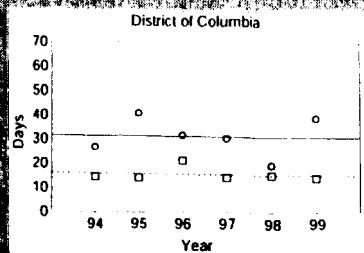
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| 1999 | - | SBGA | BellSouth-Georgia | 01 | 112 | % Commitments Met | 78.45 |
| 1999 | - | MBMI | Michigan Bell | 02 | 112 | % Commitments Met | 90.05 |
| 1999 | - | PNWA | U S WEST-Washington | 01 | 112 | % Commitments Met | 79.98 |
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EXHIBIT II

Installation Intervals for Service to IXC's

Bell Atlantic Service Quality

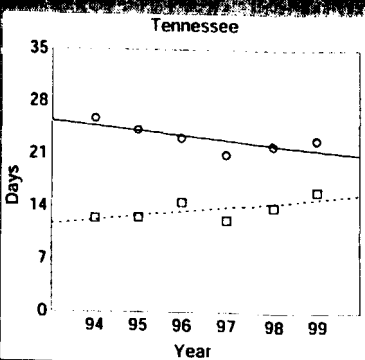
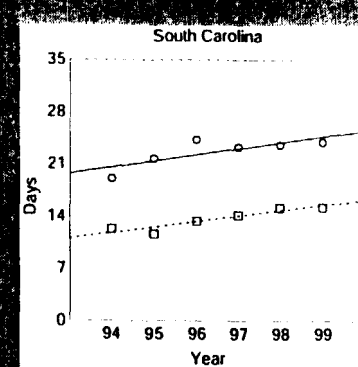
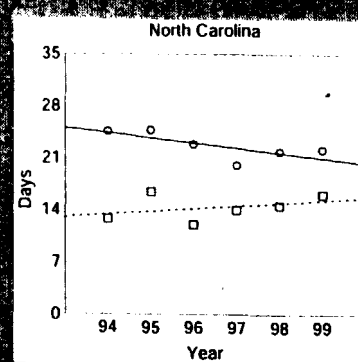
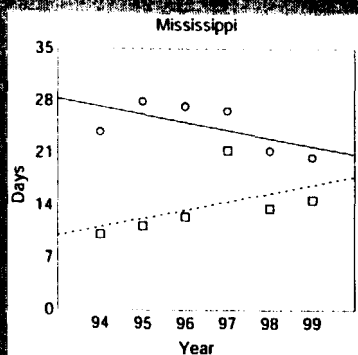
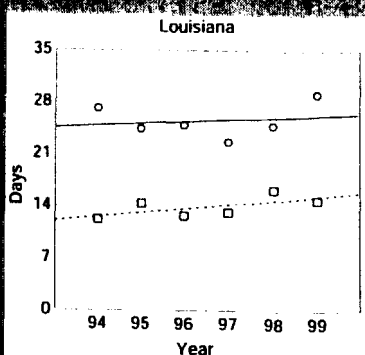
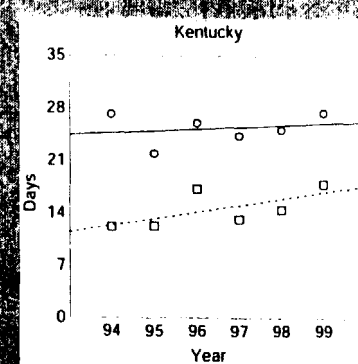
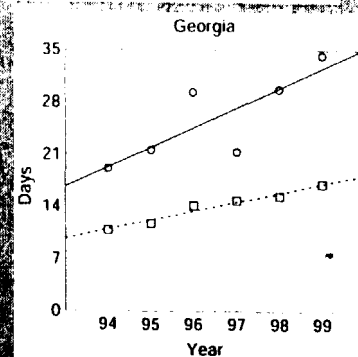
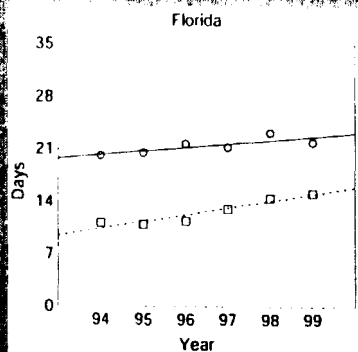
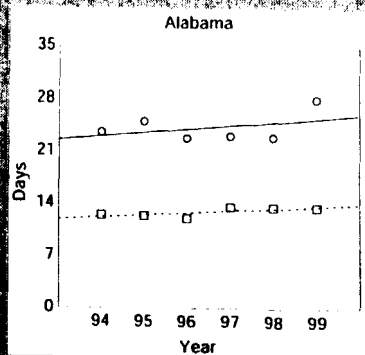
Installation Intervals for Service to IXC's



Blue ○ = Switched, Red □ = Special
 Source: ARMIS 43-05, Table I as of 5/24/2000
 Low is Better

BellSouth Service Quality

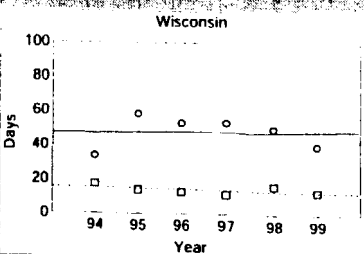
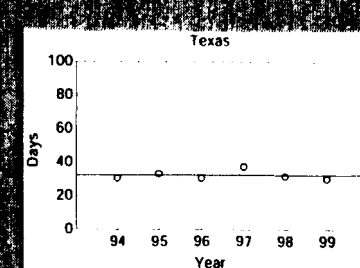
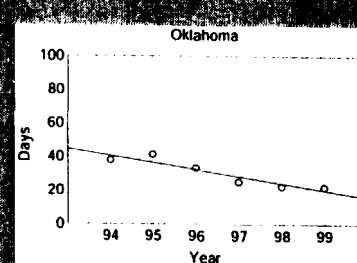
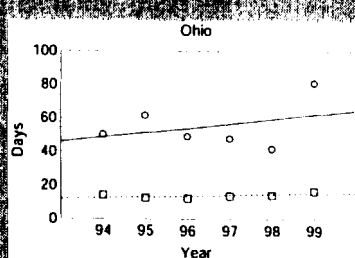
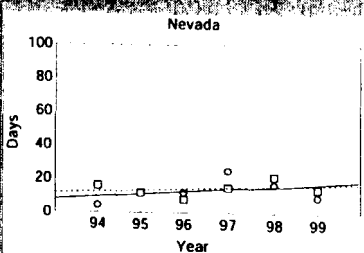
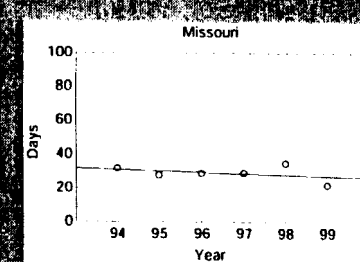
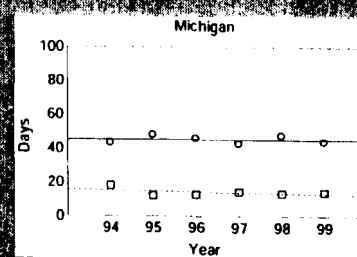
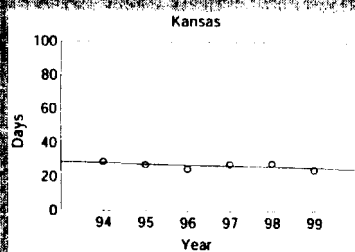
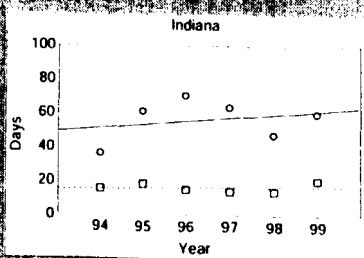
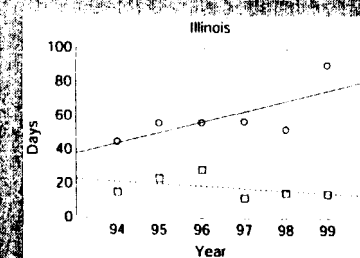
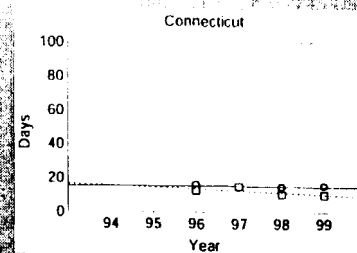
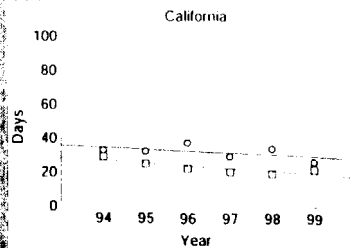
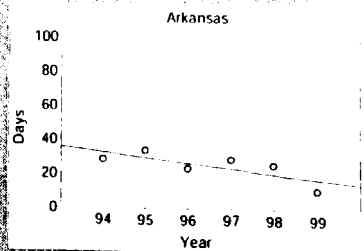
Installation Intervals for Service to IXC's



Blue ○ = Switched, Red □ = Special
 Source: ARMIS 43-05, Table I as of 5/24/2000
 Low is Better

SBC Service Quality

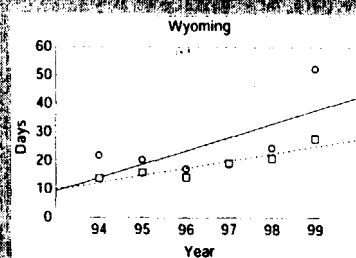
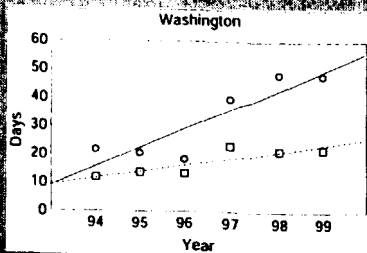
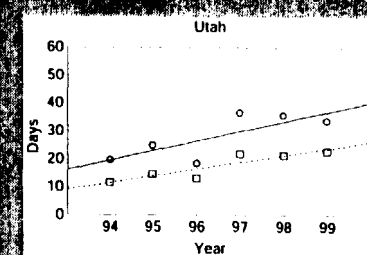
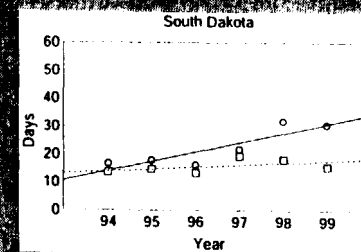
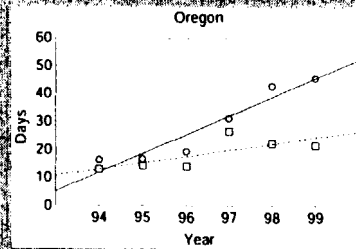
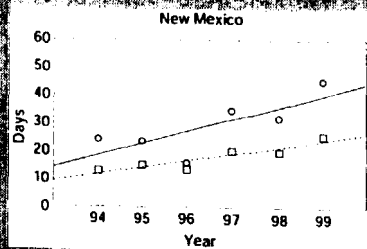
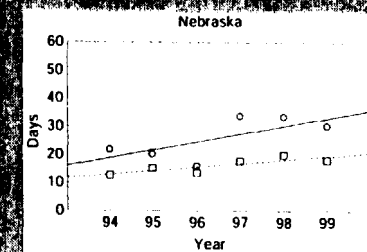
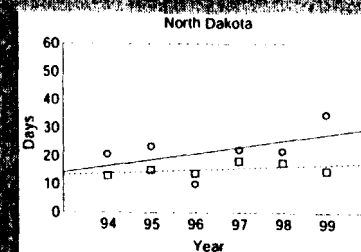
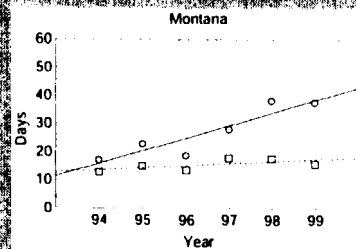
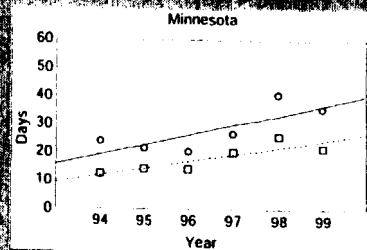
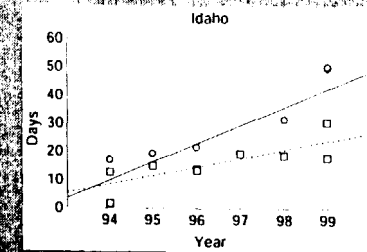
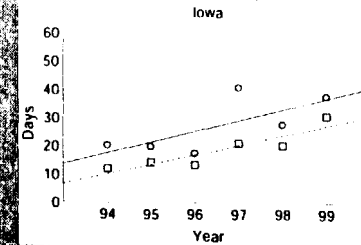
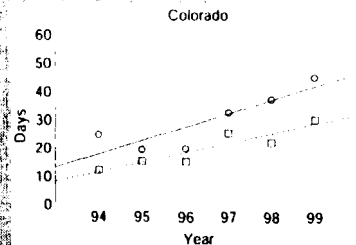
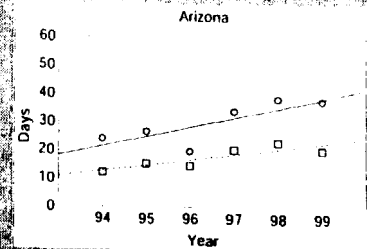
Installation Intervals for Service to IXC's



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 Source: ARMIS 43-05, Table I as of 5/24/2000
 Low is Better

US West Service Quality

Installation Intervals for Service to IXCs



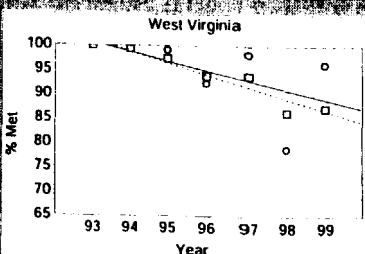
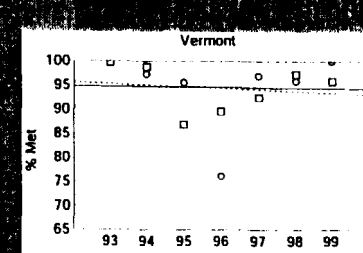
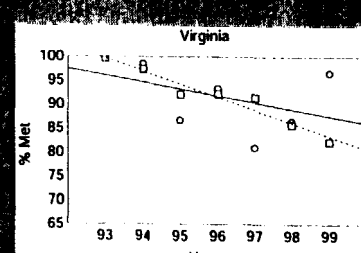
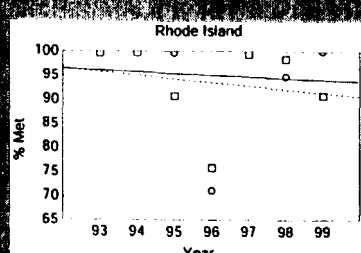
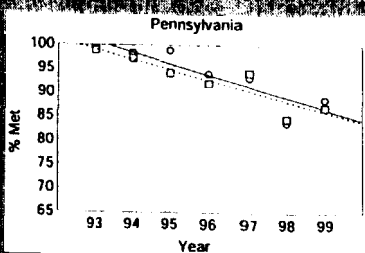
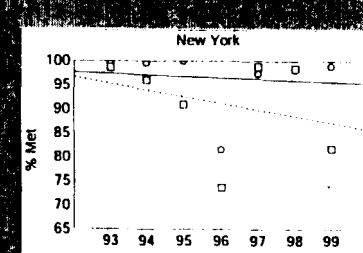
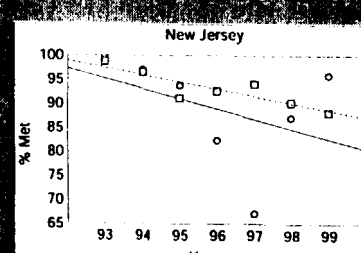
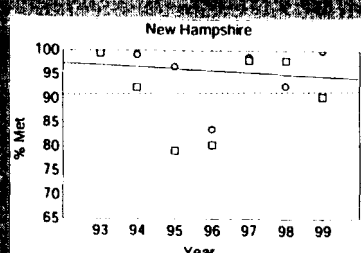
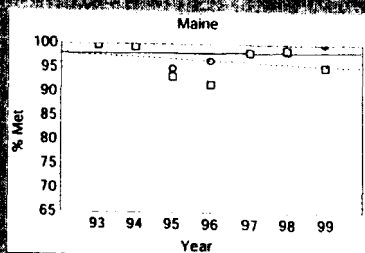
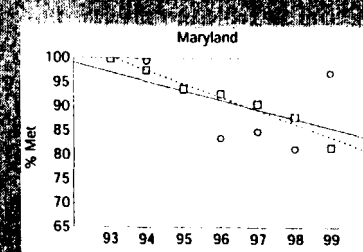
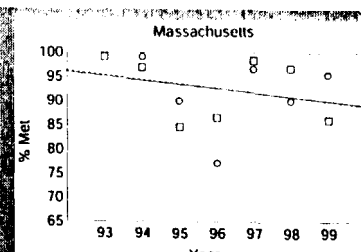
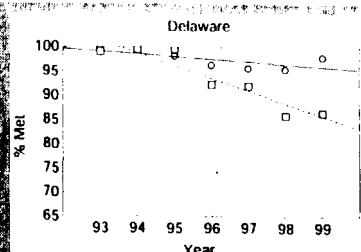
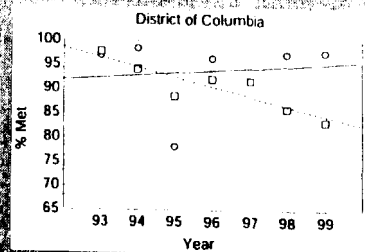
Blue ○ = Switched, Red □ = Special
 Source: ARMIS 43-05, Table I as of 5/24/2000
 Low is Better

EXHIBIT III

Installation Commitments for Service to IXC's

Bell Atlantic Service Quality

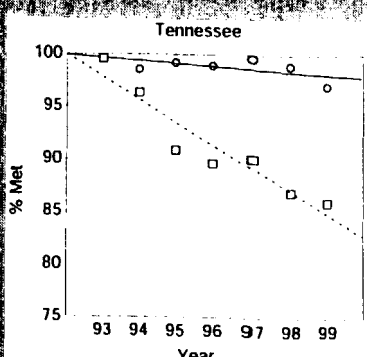
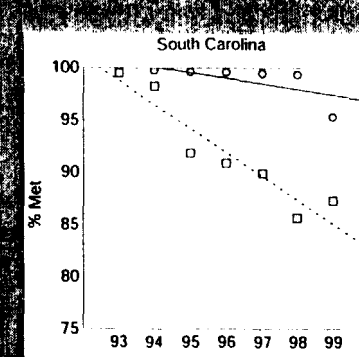
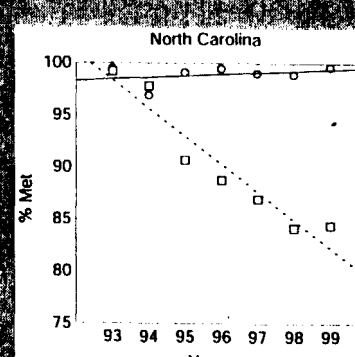
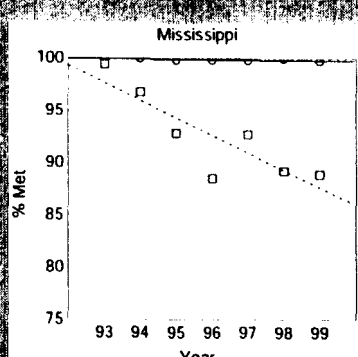
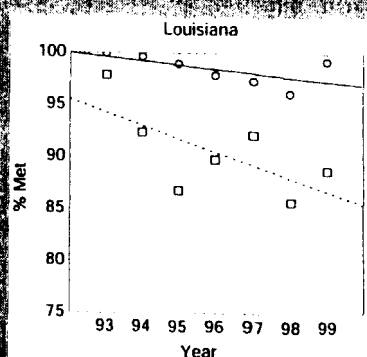
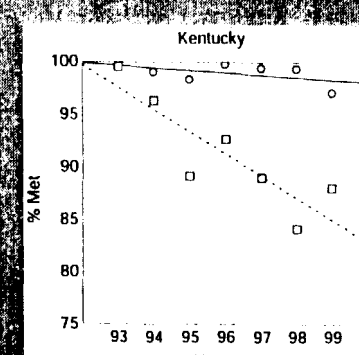
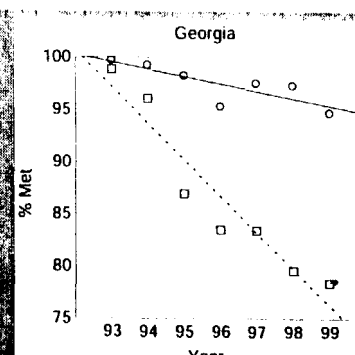
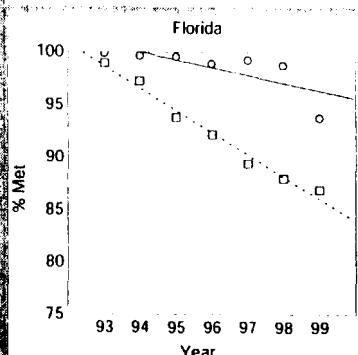
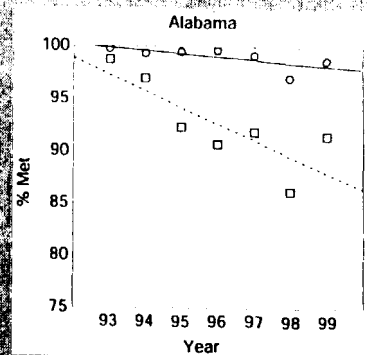
Installation Commitments for Service to IXC's



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 Source: ARMIS 43-05, Table I as of 5/24/2000
 High is Better

BellSouth Service Quality

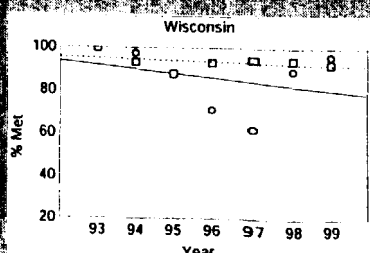
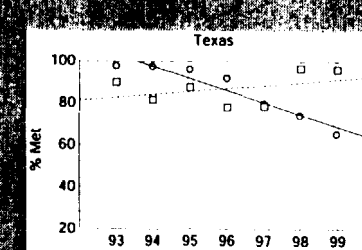
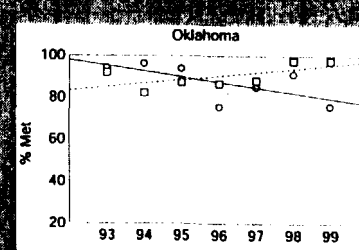
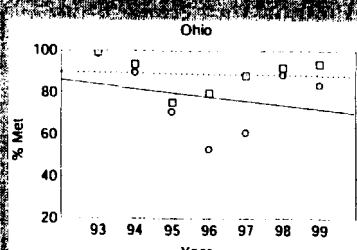
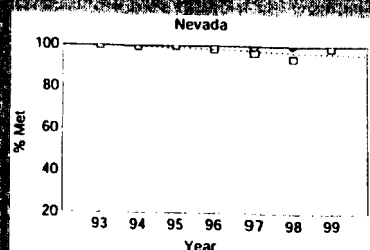
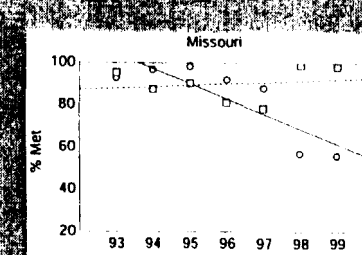
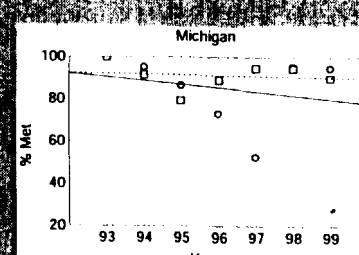
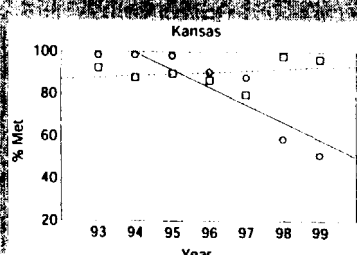
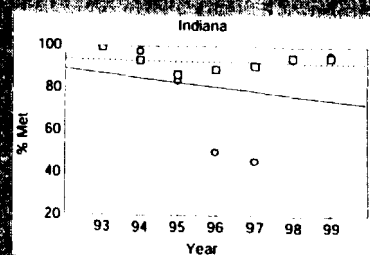
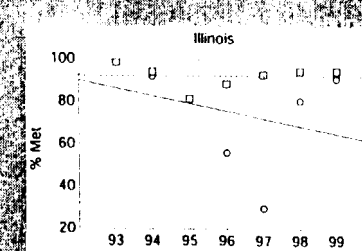
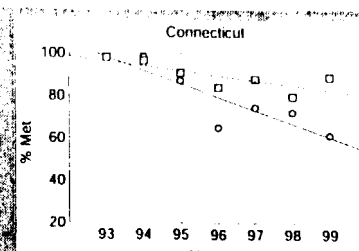
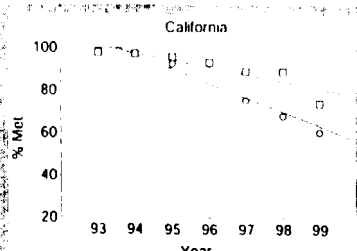
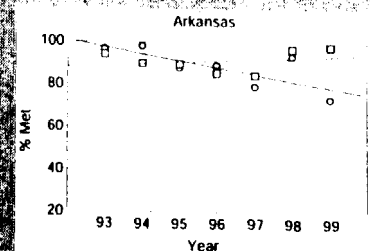
Installation Commitments for Service to IXC's



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 Source: ARMIS 43-05, Table I as of 5/24/2000
 High is Better

SBC Service Quality

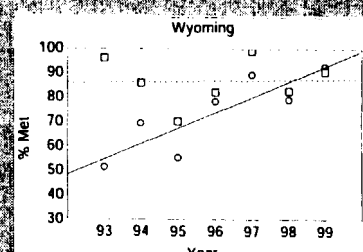
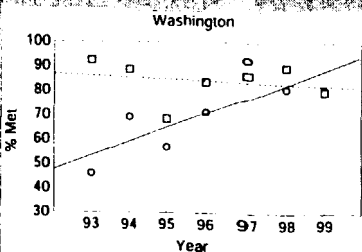
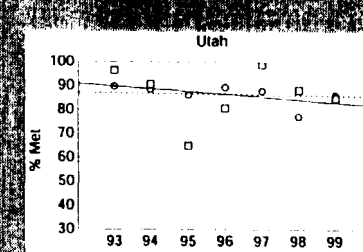
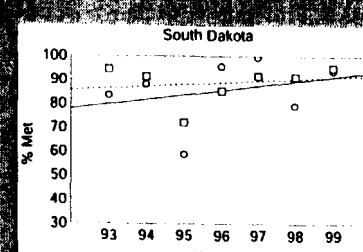
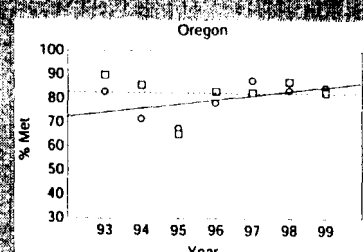
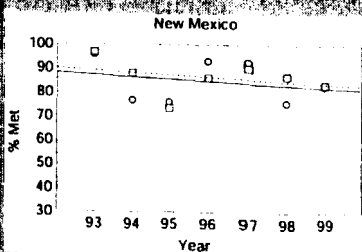
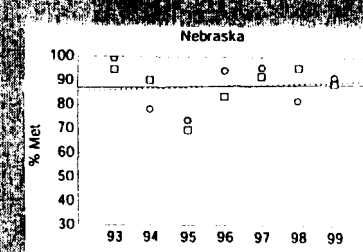
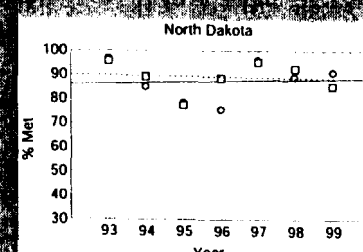
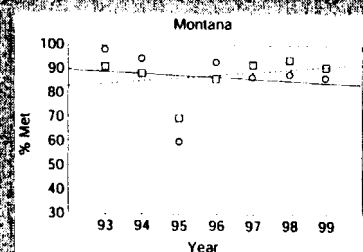
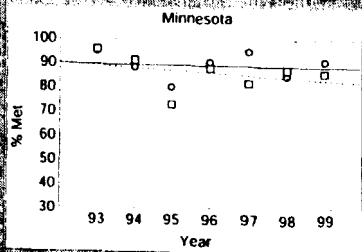
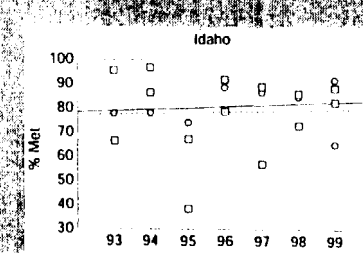
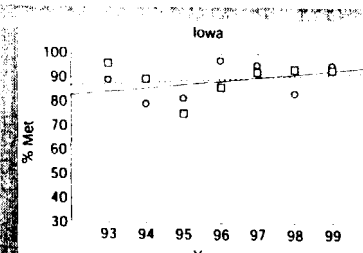
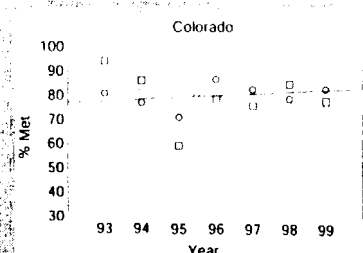
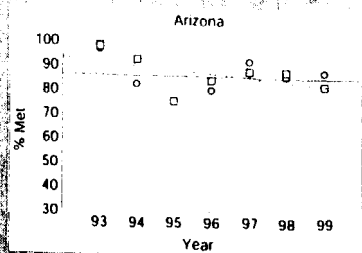
Installation Commitments for Service to IXC's



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US West Service Quality

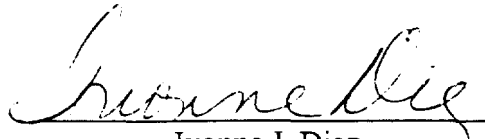
Installation Commitments for Service to IXC's



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Source: ARMIS 43-05, Table I as of 5/24/2000
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CERTIFICATE OF SERVICE

I, Ivonne J. Diaz, hereby certify that on this 10th day of July 2000, copies of the foregoing Reply Comments of Focal Communications Corporation ("Focal") were delivered by hand or First Class Mail to the persons listed on the attached list.


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